

Message

From: John Pearson [jpearson@comt.ca]
Sent: 2/8/2022 5:47:33 PM
To: Bawa, Reg [Reg.Bawa@gov.bc.ca]; Boland, Gail [Gailboland@gov.nl.ca]; Catherine Boyd [Catherine_Boyd@gov.nt.ca]; Cossitt, Ryan HI [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5c3a2a719d0f463897485ffcd1406579-Cossitt, Ry]; Craig Hutton [craig.hutton@tc.gc.ca]; Crystal Damer [Crystal.Damer@gov.ab.ca]; Elizabeth Kay-zorowski [Elizabeth.Kay-zorowski@ontario.ca]; Ian Freeman [ian.freeman@ontario.ca]; Jennifer Crummey [JenniferCrummey@gov.nl.ca]; Jim Doyle [jim.doyle@gnb.ca]; John Hawkins [jhawkins@gov.nu.ca]; Paul Godfrey [JPGODFREY@gov.pe.ca]; Rankin, Bonnie [Bonnie.Rankin@novascotia.ca]; Rich Danis [Richard.Danis@gov.mb.ca]; Serge Bijimine [Serge.bijimine@tc.gc.ca]; Sherri Young [Sherri.Young@gov.yk.ca]; Unterberg, Jérôme [Jerome.Unterberg@transports.gouv.qc.ca]
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Subject: Protests and Trucking Convoys - Follow up from NWT

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To: Policy and Planning Support Committee

As follow up to today's meeting, for your information, please find below the materials on messaging offered by Catherine Boyd from NWT.

From: Catherine Boyd <Catherine_Boyd@gov.nt.ca>
Sent: February 8, 2022 12:38 PM
To: John Pearson <jpearson@comt.ca>; McCrorie, Aaron <aaron.mccrorie@tc.gc.ca>
Cc: Delia Chesworth <Delia_Chesworth@gov.nt.ca>; Andy Tereposky <Andy_Tereposky@gov.nt.ca>
Subject: NWT Key Messages

As discussed on today's call, below are some holding lines that we put together last week in case of a blockade at the NWT/AB border. These could be strengthened, if needed, to include messaging around the fact that unlawful activity will not be tolerated and spelling out possible fines/consequences.

We also did a very quick analysis of enforcement options in support of discouraging or ending a blockade. We did not look at penalties and enforcement options under the NWT *Motor Vehicles Act*, but like other jurisdictions there would be options there, but we haven't done any analysis around whether the NWT would want to use them.

In the end, there was no blockade. We have been quite fortunate in that we have not had to deal with unlawful protests disrupting the peace, highway safety or critical supply chains

In general, commercial carriers are the life blood of the NWT. Furthermore, the winter resupply to communities and our mines that are only accessible by winter road for a short period of time is a very lucrative business for some. I do not think truckers would do anything to jeopardize this.

Let me know if you require any further information at this time.
Catherine

Key Messages:

- Participating in lawful protests is a fundamental right that Canadians have; however, it is an offence under the *Public Highways Act* for any person to obstruct a highway.
- Under the NWT's *Public Highways Act* all primary highways are subject to the direction, control and management of the GNWT, which includes Highways 1 and 3.
- Highway 1 is a critically important road for the NWT. It's a lifeline for the people in our territory. Essential supplies residents and businesses depend on are transported on that highway each day and residents use this highway for essential travel to and from Alberta.
- The GNWT will work with law enforcement partners to ensure the safety of NWT residents and the continued flow of supplies and people along this highway.
- The COVID-19 pandemic has been long and challenging for everyone. We are all tired. During these unprecedented times, the GNWT asks its residents to continue to follow the public health measures. Be kind. Northerners are used to overcoming challenges and we'll overcome this one as well.

Legal Tools

Public Highways Act

The *Public Highways Act* ("PHA") provides one potential option to address potential blockades of Highway 3. As discussed below, the Minister of Infrastructure may exercise the powers conferred on the Commissioner by subsection 28(3) of the PHA and remove any obstruction or materials deposited on the highway as part of the blockade. Further, the Minister could subsequently attempt to recover its expenses incurred in doing so from that person in an action in debt.

Section 28 of the PHA deals with the obstruction of or damage to a highway. Subsections (1)-(4) are most notable for the purposes of your question. Those subsections provide the following:

- Paragraph (1)(a) makes it an offence for a person who, without justification or excuse, obstructs a highway or deposits any material on a highway.
- Subsection (2) authorizes the court to order a person convicted of an offence under paragraph (1)(a) to remove the obstruction or material from the highway without delay.
- Subsection (3) provides that, where a person contravenes subsection (1), the "highway authority" may remove the obstruction or material deposited on the highway and recover its expenses incurred in doing so from that person in an action in debt.

- Subsection (4) clarifies that subsection (3) applies whether or not there is a conviction for an offence under subsection (1) or a court order under subsection (2).

“Highway authority” is defined in section 1 of the PHA and means the Commissioner in respect of highways subject to the direction, control and management of the Commissioner. Further, Section 3 of the PHA provides that all primary highways are subject to the direction, control and management of the Commissioner. Section 1 of the *Highway Designation and Classification Regulations* provides that all highways described in Schedule A are designated as primary highways. Section 3 of Schedule A describes Yellowknife Highway No. 3.

As such, Highway No. 1 is a primary highway for which the Commissioner is the “highway authority” who can exercise the power conferred under subsection 28(3) of the PHA. Subsection 19(2) of the *Interpretation Act* provides that, where a power conferred by an enactment on the Commissioner may be exercised or performed by the Minister who presides over the department responsible for the administration of the enactment. The Department of Infrastructure is the department responsible for the administration of the PHA. Therefore, the Minister of Infrastructure can exercise the powers conferred on the Commissioner by subsection 28(3) of the PHA pursuant to subsection 19(2) of the *Interpretation Act*. The extent of the Minister’s powers of enforcement under s. 28 of the PHA is limited to removal of the obstruction. The PHA does not speak to powers of arrest or create enforcement officers for the purposes of the Act.

However, in my view, the Territorial Policing Agreement (“the Agreement”) is also relevant to the analysis. RCMP officers are included in the definition of “peace officers” provided in the *Interpretation Act*. Specifically, 2.2(b) of the Agreement states the RCMP will:

“preserve the peace, protect life and property, prevent crime and offences against the laws of Canada and the laws in force in the Northwest Territories, apprehend criminals, offenders, and others who may be taken into lawful custody.”

Subsection 2(1) of the *Summary Conviction Procedures Act* states that:

The provisions of the Criminal Code relating to summary conviction offences apply, with such modifications as the circumstances require, to all offences created by an enactment or municipal bylaw, except to the extent that the enactment or bylaw or this Act or the regulations made under this Act provide otherwise.

Subsection 495(1) of the *Criminal Code* sets out when a peace officer may arrest without warrant, although it is subject to the limitations outlined in subsection (2). Those subsections provide the following:

495 (1) A peace officer may arrest without warrant

- a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
- b) a person whom he finds committing a criminal offence; or
- c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

2) A peace officer shall not arrest a person without warrant for

- a) an indictable offence mentioned in section 553,
- b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or
- c) an offence punishable on summary conviction, in any case where
- d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to
 - i. establish the identity of the person,
 - ii. secure or preserve evidence of or relating to the offence, or
 - iii. prevent the continuation or repetition of the offence or the commission of another offence,

- may be satisfied without so arresting the person, and
- e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.

Given this provision of the *Criminal Code* it is our view that the RCMP could have powers of arrest depending on the specific circumstances.

It is likely that enforcement measures under the *Public Highways Act* will be sufficient to deal with disturbances or obstructions on the highway, and that other options need not be considered.

Injunction

Injunctive relief is another remedy available in these circumstances, but given that the expected activity is likely to qualify as an offence under the PHA (with associated enforcement options) an injunction application is probably an unnecessary step.